

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHIGAN LABORERS' PENSION  
FUND, et al.,

Plaintiffs

Case No. 08-12996

v.

Hon. Lawrence P. Zatkoff

RITE WAY FENCE, INC., EUGENE  
ZAPCZYNSKI and MARK ZAPCZYNSKI,

Defendants.

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MICHIGAN LABORERS' PENSION  
FUND, et al.,

Plaintiffs,

Case No. 08-13724

v.

Hon. Lawrence P. Zatkoff

MARX CONTRACTING, INC., EUGENE  
ZAPCZYNSKI and MARK GRUNDER,

Defendants.

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**OPINION AND ORDER**

AT A SESSION of said Court, held in the  
United States Courthouse, in the City of Port Huron,  
State of Michigan, on September 21, 2010

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE

On February 25, 2010, Plaintiffs filed a Motion for Contempt and for Default Judgment (Docket #35 in Case No. 08-12296 and Docket #23 in Case No. 08-13724) based on alleged violations of discovery orders that Defendants stipulated to and/or were signed by Magistrate Judge Virginia Morgan. Defendants did not file a response to the motion and, on September 10, 2010, this Court issued Defendants an Order to Show Cause why Plaintiffs' Motion for Contempt and for

Default Judgment should not be entered. In response to the Order to Show Cause, Defendants note that the parties resolved the issues that precipitated the filing of Plaintiffs' Motion for Contempt and for Default Judgment. Defendants further note that a stipulated order was filed with the Court on April 6, 2010, and that among the stipulations therein were the following:

- Defendants would produce and organize documents in response to outstanding discovery requests and in compliance with the Court's previous discovery orders by April 12, 2010; and
- The Court will not rule on Plaintiffs' motion for default judgment in Docket 35 in the case of the Rite Way matter and Docket 22 in Marx Contracting in Case 08-13724 **unless a pleading is filed by Plaintiffs indicating there is still an issue as to compliance.** (Emphasis added).

Defendants state that, on April 12, 2010, they produced documents and responses to all outstanding discovery requests to Plaintiffs. In addition, the Court's review of the docket reveals that Plaintiffs have not filed any pleading since April 12, 2010 regarding any outstanding issues as to Defendants' compliance with the Court's discovery orders.

For the foregoing reasons, the Court hereby ORDERS that:

1. The September 10, 2010 Order to Show Cause issued to Defendants is DISMISSED; and
2. Plaintiffs' Motion for Contempt and for Default Judgment (Docket #35 in Case No. 08-12296 and Docket #23 in Case No. 08-13724) is DENIED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff  
LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE

Dated: September 21, 2010

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by

electronic or U.S. mail on September 21, 2010.

s/Marie E. Verlinde

Case Manager

(810) 984-3290